IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

CRP.No. 252 of 1996(C)

SMP.403/1976 of TALUK LAND BOARD, PERINTALMANNA

.....

REVN. PETITIONER:

P.P.AHAMMED, S/O.ALIKUTTY,
PUDUKUDIYIL PUTHIYAKKAL,
B.P.ANGADI, TIRUR.

BY ADV. SRI.N.N.SUGUNAPALAN (SR.)

RESPONDENTS:

1. TALUK LAND BOARD, PERINTHALMANNA.

2. TAHSILDAR, PERINTHALMANNA.

3. STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY TO GOVT., GOVT. SECRETARIAT, TRIVANDRUM.

BY GOVERNMENT PLEADER SRI SHYSON P. MANGUZHA

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CMP.NO.416/96 IN CRP.NO.252/96

Dismissed

20/2/2007 Sd/- P.R.RAMAN, JUDGE.

P.R.RAMAN, J.

C.R.P.NO.252 OF 1996

Dated this the 20th day of February, 2007

O R D E R

Petitioner impugns the order passed by the Taluk Land Board, Perinthalmanna under Section 85 (9A) of the Kerala Land Reforms Act by which an extent of 35.03 acres of rubber plantation (23.40 acres in Sy.No.17 of Elamkulam Village and 11.63 acres in Sy.No.18 of Palathole desom) was exempted by its earlier proceedings, which was withdrawn and directed the petitioner to surrender the said extent. Briefly stated facts are as follows:

Petitioner was the land holder against whom suo motu proceedings are initiated under Section 85 of the Kerala Land Reforms Act. Final order was passed by the Taluk Land Board on 14/1/1981 directing the assessee to surrender an extent of 31.30 acres of surplus land. Challenge thereof was made by the assessee before this Court by filing C.R.P.No.1247/81; but was not successful.

The order became final. However, the assessee was given a fresh opportunity to exercise his option regarding the land to be surrendered as per order in Review Petition No.111/81 dated 5/12/1981. Subsequently, the revised option exercised by the assessee was also accepted and the Village Officer was directed to take possession of 31.30 acres of surplus land from different survey numbers. Out of the total extent, 19.27 acres were already taken possession off by the Tahsildar on 20/5/1981. At that point some third parties intervened in the matter and sought to reopen the case by filing applications under Section 85(8) of the K.L.R. Act inter alia contending that they are in possession of the lands in R.S.No.31, 1/1 and 18 of Elamkulam Village, which were the lands opted to be surrendered by the declarant. O.P.NO.2142/82 was also filed for a direction to consider their

applications filed under Section 85(8) and eventually as per the direction of this Court, their applications were rejected. In the meantime, the Taluk Land Board also issued notice under Section 85(9A), which was the newly introduced provision inserted by Act 16/89 proposing to review of its own decision dated 14/1/1981. The notice is dated nil. It is stated in the said notice that the surplus land was ordered to be surrendered as per orders dated 14/1/1981 and 17/3/1982 and the case has been scrutinised now in the light of the Amendment Act 16/89, that certain irregularities were seen occurred in the case, that the exemption granted are not admissible or not supported by valid documentary evidence and that no evidence to show that an extent of 29.21 acres of land (23.40 in Sy.No.17 and 5.81 in Sy.No.18) was converted into rubber plantation

prior to 1/4/1964 had been produced or got verified. Reference was also made to the petition filed by the third parties under Section 85(8). Objections were filed by the petitioner herein and eventually the impugned order was passed.

2. Though a contention was raised that as per the proviso to Section 85(9A), final order itself has to be passed within the extended period of three years from the date of commencement of the Kerala Land Reforms (Amendment) Act 1989, this question was referred to a Full Bench along with various other cases and the Full Bench finally held that it is sufficient, if a notice is issued proposing to reopen the case invoking Section 85 (9A) within the period provided under the proviso. The matter was remanded to the Single Bench for considering the other aspects of the matter and that is how the matter again came up for

consideration before this Court.

3. The learned senior counsel, Sri N.N.Sugunapalan, appearing on behalf of the petitioner contended that as per Section 85(9A) of the Kerala Land Reforms Act, the power of review is confined to certain specific grounds made mention of in the section itself and the present case will not fall within any of the grounds on which a review is permitted under the said provision. The learned Government Pleader appearing for the State on the other hand would contend that absence of materials to support the claim for exemption will also fall within the grounds under the provision and hence the present order reviewing the earlier order is well within the competence of the Taluk Land Board as empowered under Section 85(9A) of the K.L.R. Act.

4. Heard both sides.

5. For the purpose of appreciation of the rival submission, it will be useful to refer to the relevant provisions contained in Section 85 (9A), which reads as follows:

> **"Power of Taluk Land Board to review its decision.--** Nothwithstanding anything contained in this Act or in the Limitation Act, 1963 (Central Act 36 of 1963), or in any other law for the time being in force, or in any judgment, decree or order of any Court or other authority, the Taluk Land Board may, if it is satisfied that its decision under sub-section (5) or sub-section (7) or sub-section (9) requires to be reviewed on the ground that such decision has been made due to the failure to produce relevant data or other particulars relating to ownership or possession before it, or by collusion or fraud or any suppression of material facts the Taluk Land Board may review such decision after giving an opportunity to the parties of being heard and pass such orders as it may think fit:
>
> Provided that the Taluk Land Board shall not reopen any such case after the expiry of three years from the date of coming into force of the Kerala Land Reforms (Amendment) Act, 1989."

6. On a reading of the above provision it is thus seen that the power of review conferred under Section 85(9) is confined to any one of the following grounds:

(i) That the decision rendered earlier must have been supported to the relevant date or other particulars relating to ownership or possession before it;

(ii) That the decision rendered earlier was by collusion or fraud, and

(iii) That the decision was based on any suppression of material facts.

7. In this case there is no dispute regarding the ownership or possession of the land and admittedly the property in question belongs to the petitioner and hence there was no occasion requiring proof of ownership or possession. Neither the notice issued nor the order say that

there was a collusion or fraud which necessitated the review. There was also no case that there was any suppression of the material facts before the Taluk Land Board while deciding the case earlier.

8. The finding of the Taluk Land Board to reject the exemption claimed as a rubber plantation is because the registration certificate produced contains mistakes or corrections as the case may be and there is nothing to show the date of actual planting of the rubber trees in the registration certificate. In this connection, I may refer to the order passed by the Taluk Land Board on 14/1/1981 wherein this question was considered. In Objection No.4 the contention of the assessee was that the entire land in Perinthalmanna Taluk extending to 2 acres 37 cents is fully covered with rubber plantation from 1961 onwards, though

there are vacant rocky areas with cashew plantations. That the entire area of 82 acres 37 cents ought to be exempted being rubber plantation and lands lying interspered. The Taluk Land Bord, on consideration of this contention referred to a licence No.285/61 issued by the Rubber Board on 9/1/1961, said that the said licence shows that Sri Ahamed was permitted to plant rubber in 80.25 acres of land in Muthukurussi before 31/12/1961. He has not produced any records to show the planting was done on the basis of the licence. The rest of the portion in the order is very relevant. The Authorised Officer after inspection of the lands reported that there are rubber plantations in Sy.Nos.17 and 18 of Palathole desom which appears to be aged 15 to 20 years. He also reported that the lands comprised in Sy.Nos.17 and 18 measuring

in all acres lie as one block with rubber plantation. The rubber plantation in an area of about 5 to 7 thick block is reported to be aged only 8 to 10 years. Considering the report of the Authorised Officer the Land Board decided to exempt the rubber plantation of an area of 35.03 acres in Sy.Nos.17 and 18 as it is stated to be planted prior to 1/4/64 and to reject the claim in respect of Sy.Nos.1/1, 1/2, 16/3 and 31 and there is no proof to show that the above area was converted into rubber plantation prior to 1/4/64. Thus the Land Board considered not only the licence produced by the assessee but also the report of the Authorised Officer, applied its mind and granted partial exemption as against the claim. The licence produced in the case does not show any such correction or mistake. This is at page 61 of the records produced in this case.

True that the licence itself will not show the actual plantation of rubber on a particular date. But this is not a matter to prove by the records alone, as this is a matter to be decided based on the entire evidence in this case and the age of the rubber trees has been taken note of based on the Authorised Officer's report and then only the Taluk Land Board exempted the extent in question. With reference to the registration certificate the Taluk Land Board only says that there are some corrections or mistakes; it does not say that the report of the Authorised Officer was in any way wrong or acceptable or there was any fraud or collusion in that regard. Thus this is nothing but a change of opinion and is not covered by any of the grounds mentioned in Section 85(9A) of the Kerala Land Reforms Act and hence it has to be held that the Taluk Land Board

has no jurisdiction or power to reopen the case. As such this is an order beyond the power of the Taluk Land Board, as it does not fall with the grounds specified on which the Taluk Land Board could have reopened or reviewed its order as provided under Section 85(9A) of the Act.

9. In the result, the order passed by the Taluk Land Board is set aside. However, this order will not stand in the way of the Taluk Land Board in passing final orders regarding the balance extent if any to be surrendered by the petitioner by its earlier order.

C.R.P. is allowed subject to the above observation.

P.R.RAMAN,
Judge.

kcv.

P.R.RAMAN, J.

C.R.P.NO.252 OF 1996

O R D E R

20th February, 2007